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SUPREME COURT, U. S.
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In The Supreme Court Of The United States

October Term, 1969

No. 39

RICHARD HALL AND CHRISTINE HALL,

Appellants

v.

HARRIET BEALS, Clerk and Recorder of El Paso County, and BESS TITUS, Election Supervisor of El Paso County,

Appellees

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JURISDICTIONAL STATEMENT FILED:
January 16, 1969
PROBABLE JURISDICTION NOTED:
May 5, 1969

C O N T E N T S

	Page
COMPLAINT.	1
ANSWER	6
MOTION FOR PERMISSION TO FILE AN AMENDED COMPLAINT	8
AMENDED COMPLAINT.	10
JUDGMENT FOR DEFENDANTS.	15
MEMORANDUM OPINION AND ORDER . . .	15

RELEVANT DOCKET ENTRIES

October 4, 1968, Summons and Complaint filed.

October 24, 1968, Answer filed.

October 25, 1968, Motion for Permission to File an Amended Complaint filed and heard, Amended Complaint filed, oral argument heard by District Court.

October 30, 1968, Judgment for Defendants entered by District Court.

November 29, 1968, Memorandum Opinion and Order handed down by District Court.

RELEVANT DOCKET ENTRIES (Continued)

December 13, 1968, Notice of Appeal to Supreme Court filed.

January 16, 1969, Jurisdictional Statement filed in Supreme Court.

May 5, 1969, Probable Jurisdiction noted by Supreme Court.

In The Supreme Court Of The United States

October Term, 1968

No. 950

RICHARD HALL AND CHRISTINE HALL,

Appellants

v.

HARRIET BEALS, Clerk and Recorder of El Paso County, and BESS TITUS, Election Supervisor of El Paso County,

Appellees

* * *

COMPLAINT

Plaintiffs, for themselves and all others similarly situated, by their attorneys, QUIGLEY, WILDER, HELWIG & PALERMO, move this Court for an injunction restraining the enforcement and operation of CRS

49-24-1 (1963) on the grounds of the unconstitutionality of the law under the Federal Constitution and for relief in the nature of Mandamus to compel the Defendants to register Plaintiffs as qualified electors to vote in the forthcoming Presidential and Vice-Presidential Election and to allow Plaintiffs to vote in the said election, and in support of this complaint, Plaintiffs allege as follows:

1. Plaintiffs are bona fide residents and domiciliaries of the County of El Paso and the State of Colorado, having moved to the County on June 15, 1968, having taken permanent employment in the City of Colorado Springs, having purchased a home in the City of Colorado Springs, having registered their car in Colorado, having acquired Colorado driver's licenses, and in all other respects, become residents of the State of Colorado.

2. That Plaintiffs wish to vote in the November 5th Presidential and Vice-Presidential Election under the special procedures outlined in CRS 49-24-1 et. seq.

3. That Plaintiffs have requested the Defendants to register them as qualified electors and have been refused such registration because of the six months residency requirement contained in CRS 49-24-1. Plaintiffs in all other respects

save the six months residency requirement of CRS 49-24-1 are qualified to vote for President and Vice-President in that Plaintiffs are American citizens, over the age of twenty one, and under no disability that would prevent them from voting.

4. That Plaintiffs have exhausted their administrative remedies in that they have appealed to the El Paso County Election Officials, the Colorado Secretary of State, and have appealed for an absentee ballot to vote in California, the State from which Plaintiffs came before residing in Colorado, and have been refused relief by all the above.

5. That the six months residency requirement of CRS 49-24-1 violates the Federal Constitution in that it denies Plaintiffs equal protection of the laws, as contained in the Fourteenth Amendment to the Constitution, in that such residency requirement denies to Plaintiffs the right to vote, a right enjoyed by other residents of Colorado who in no respect are different in ability, maturity, association with the national issues, interest in national policies, or any other factor that should control a voter's qualifications to vote for President and Vice-President.

6. That the six-months residency requirement violates Plaintiffs' privileges and immunities as a citizen of the United

States, which are protected by Article IV, Section 2 of the Federal Constitution and Section 1 of the Fourteenth Amendment to the Constitution, in that such residency requirements impinge upon Plaintiffs' right to move among the several States and to change residency during an election year, and result in Plaintiffs losing their National elective franchise for no justifiable reason

7. That the six months residency requirement is arbitrary, capricious, discriminatory and without any logical or legal justification in theory and without any practical validity in practice.

8. That Plaintiffs are without a speedy, adequate, or effective remedy at law in that the Defendant Election Officials refuse to register Plaintiffs to vote in the forthcoming election.

9. That there is a class of voters similarly situated in this County; that the class is too numerous to all appear before this Court; that there is a common question of law and fact among all members of the class, with common relief sought; and that Plaintiffs will fairly and adequately represent all members of the class.

10. That the relief sought from Defendants is not discretionary, in that once the six month residency requirement is removed, registering Plaintiffs to

vote involves no discretion on the part of Defendants, and therefore relief in the nature of Mandamus is appropriate relief.

WHEREFORE, Plaintiffs pray for issuance of an Order or Writ in the nature of Mandamus compelling the Election Officials named as Defendants to register Plaintiffs to vote as a qualified elector for the office of President and Vice-President in the forthcoming National Election, and for an injunction restraining the enforcement and operation of the provisions of CRS 49-24-1, 49-3-1, and Section 1 of Article 7 of the Colorado Constitution, insofar as they establish a residency requirement to vote in the National Election for the office of President and Vice-President on the grounds that such provisions are in violation of the Federal Constitution. Plaintiffs further pray, even should this Court rule against Plaintiffs, that the Defendant Election Officials be directed to register Plaintiffs and allow Plaintiffs to vote in the forthcoming National Election on a conditional basis, so that should either party choose to appeal to the Supreme Court of the United States and such appeal should run past the time of the National Election on November 5, 1968, that the relief sought by Plaintiffs not become moot. Should Plaintiffs win an eventual appeal, the Defendant Election Officials shall be directed to count Plaintiffs' votes as normally cast and valid ballots; should

Plaintiffs lose on final appeal to the Supreme Court of the United States, Defendant Election Officials shall destroy Plaintiffs' ballots as if they had never been cast. This conditional registration is the only way Plaintiffs' sought-for relief can be preserved should an appeal by either party run past the date of the National Election in question.

QUIGLEY, WILDER, HELWIG & PALERMO

By /s/ Richard V. Hall
Attorneys for Plaintiffs
Suite 602, Pikes Peak Building
Colorado Springs, Colorado
471-7700

* * *

ANSWER

COME NOW the Defendants above named by and through Robert L. Russel, District Attorney of the County of El Paso, State of Colorado, and in Answer to the Complaint of the Plaintiffs, admit, deny, and allege as follows:

FIRST DEFENSE

That the Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

That the Complaint is fatally defective in that Plaintiffs have failed to make a jurisdictional allegation as required by Rule 8 (a) (1) of the Federal Rules of Civil Procedure.

THIRD DEFENSE

1. That the Defendants are without sufficient knowledge and information upon which to base a belief as to the truth of the allegations contained in Paragraphs 1, 2, 3, 4, 8 and 9 of Plaintiff's Complaint and therefore denys (sic) the same.

2. That the Defendants deny the allegations contained in Paragraphs 5, 6, 7, and 10 of Plaintiff's Complaint.

3. That the Defendants deny each and every allegation in Plaintiff's Complaint not herein specifically admitted, denied or otherwise put in issue.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants pray for judgment thereon in their favor and against the Plaintiffs, for the costs of this action, and for such other and further relief as the Court may deem proper in the premises.

ROBERT L. RUSSEL
District Attorney
El Paso County, Colorado

By /s/ Bernard R Baker
Bernard R. Baker
Deputy District Attorney
Attorneys for Defendants
Suite 455 Independence Bldg
Colorado Springs, Colorado 80902
Telephone: 636-1671

* * *

MOTION FOR PERMISSION
TO FILE AMENDED COMPLAINT

Plaintiffs, through their attorneys, QUIGLEY, WILDER, HELWIG & PALERMO, move this Court for permission to file an amended complaint in this action, and in support of this motion plaintiffs allege as follows:

1 The second defense in defendants' answer states that plaintiffs' complaint is fatally defective in that plaintiffs have failed to make a jurisdictional allegation as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure.

2 That such failure to make a jurisdictional allegation was an inadvertent omission by the plaintiffs, who felt that they had stated sufficient allegations of jurisdiction in their expressions of claimed unconstitutionality of the

Colorado statute they raised in their original complaint.

3. That the first point raised by plaintiffs in their brief, which has been filed in this action, is an allegation of jurisdiction.

4. That jurisdiction in a suit such as this is proper under 28 U.S.C. 1343.

5. That Rule 15(a) of the Federal Rules of Civil Procedure allow a party to amend his pleading upon leave of Court and states that leave shall be freely given when justice so requires.

WHEREFORE, Plaintiffs move that this Court grant them permission to file an amended complaint in this matter making a sufficient and definite allegation of jurisdiction.

Respectfully submitted,

QUIGLEY, WILDER, HELWIG & PALERMO

By /s/ Richard V. Hall
Attorneys for Plaintiffs
Suite 602, Pikes Peak Building
Colorado Springs, Colorado
471-7700

* * *

AMENDED COMPLAINT

Plaintiffs, for themselves and all others similarly situated, by their attorneys, QUIGLEY, WILDER, HELWIG & PALERMO, move this Court for an injunction restraining the enforcement and operation of CRS 49-24-1 (1963) on the grounds of the unconstitutionality of the law under the Federal Constitution and for relief in the nature of Mandamus to compel the Defendants to register Plaintiffs as qualified electors to vote in the forthcoming Presidential and Vice-Presidential Election and to allow Plaintiffs to vote in the said election, and in support of this complaint, Plaintiffs allege as follows:

1 District Court shall have original jurisdiction of any civil action authorized by law to be commenced by any person to redress the deprivation, under color of any State law or statute, of any right, privilege or immunity secured by the Constitution of the United States providing for equal rights of citizens. 28 U.S.C. 1343(3).

2. Plaintiffs are bona fide residents and domiciliaries of the County of El Paso and the State of Colorado, having moved to the County on June 15, 1968, having taken permanent employment in the City of Colorado Springs, having

purchased a home in the City of Colorado Springs, having registered their car in Colorado, having acquired Colorado driver's licenses, and in all other respects, become residents of the State of Colorado.

3. That Plaintiffs wish to vote in the November 5th Presidential and Vice-Presidential Election under the special procedures outlined in CRS 49-24-1 et. seq.

4. That Plaintiffs have requested the Defendants to register them as qualified electors and have been refused such registration because of the six months residency requirement contained in CRS 49-24-1. Plaintiffs in all other respects save the six months residency requirement of CRS 49-24-1 are qualified to vote for President and Vice-President in that Plaintiffs are American citizens, over the age of twenty one, and under no disability that would prevent them from voting.

5. That Plaintiffs have exhausted their administrative remedies in that they have appealed to the El Paso County Election Officials, the Colorado Secretary of State, and have appealed for an absentee ballot to vote in California, the State from which Plaintiffs came before residing in Colorado, and have been refused relief by all the above.

6. That the six months residency requirement of CRS 49-24-1 violates the Federal Constitution in that it denies Plaintiffs equal protection of the laws, as contained in the Fourteenth Amendment to the Constitution, in that such residency requirement denies to Plaintiffs the right to vote, a right enjoyed by other residents of Colorado who in no respect are different in ability, maturity, association with the national issues, interest in national policies, or any other factor that should control a voter's qualifications to vote for President and Vice-President

7 That the six-months residency requirement violates Plaintiffs' privileges and immunities as a citizen of the United States, which are protected by Article IV, Section 2 of the Federal Constitution and Section 1 of the Fourteenth Amendment to the Constitution, in that such residency requirements impinge upon Plaintiffs' right to move among the several States and to change residency during an election year, and result in Plaintiffs losing their National elective franchise for no justifiable reason

8 That the six months residency requirement is arbitrary, capricious, discriminatory and without any logical or legal justification in theory and without any practical validity in practice.

9 That Plaintiffs are without a

speedy, adequate, or effective remedy at law in that the Defendant Election Officials refuse to register Plaintiffs to vote in the forthcoming election.

10. That there is a class of voters similarly situated in this County; that the class is too numerous to all appear before this Court; that there is a common question of law and fact among all members of the class, with common relief sought; and that Plaintiffs will fairly and adequately represent all members of the class.

11. That the relief sought from Defendants is not discretionary, in that once the six month residency requirement is removed, registering Plaintiffs to vote involves no discretion on the part of Defendants, and therefore relief in the nature of Mandamus is appropriate relief.

WHEREFORE, Plaintiffs pray for issuance of an Order or Writ in the nature of Mandamus compelling the Election Officials named as Defendants to register Plaintiffs to vote as a qualified elector for the office of President and Vice-President in the forthcoming National Election, and for an injunction restraining the enforcement and operation of the provisions of CRS 49-24-1, 49-3-1, and Section 1 of Article 7 of the Colorado Constitution, insofar as they establish a residency requirement to vote in the National Elec-

tion for the office of President and Vice-President on the grounds that such provisions are in violation of the Federal Constitution. Plaintiffs further pray, even should this Court rule against Plaintiffs, that the Defendant Election Officials be directed to register Plaintiffs and allow Plaintiffs to vote in the forthcoming National Election on a conditional basis, so that should either party choose to appeal to the Supreme Court of the United States and such appeal should run past the time of the National Election on November 5, 1968, that the relief sought by Plaintiffs not become moot. Should Plaintiffs win an eventual appeal, the Defendant Election Officials shall be directed to count Plaintiffs' votes as normally cast and valid ballots; should Plaintiffs lose on final appeal to the Supreme Court of the United States, Defendant Election Officials shall destroy Plaintiffs' ballots as if they had never been cast. This conditional registration is the only way Plaintiffs' sought-for relief can be preserved should an appeal by either party run past the date of the National Election in question.

QUIGLEY, WILDER, HELWIG & PALERMO

By /s/ Richard V. Hall
Attorneys for Plaintiffs
Suite 602, Pikes Peak Building
Colorado Springs, Colorado
471-7700

* * *

JUDGMENT FOR DEFENDANTS

THIS CAUSE came on for hearing on October 25, 1968 before the statutory court and the court having fully considered the points is of the opinion that the statute cited is valid and a written opinion will follow, and the court having directed the clerk to enter judgment, it is hereby;

ORDERED AS FOLLOWS:

1) That the judgment is entered in favor of the defendants against the plaintiffs.

2) That the action and complaint be dismissed

DATED at Denver, Colorado, this 30th day of October, 1968

BY ORDER OF THE COURT:

/s/ G Walter Bowman
G. WALTER BOWMAN, Clerk

* * *

MEMORANDUM OPINION AND ORDER

DOYLE, Judge

Plaintiffs, on behalf of themselves

and others similarly situated, seek to enjoin the enforcement, execution and administration of the provisions of Colorado Revised Statutes 1963, § 49-24-1.[1] This prohibits a resident of the State of Colorado from voting in elections for the President and Vice-President of the United States unless such resident has resided within the State of Colorado for a period of "not less than six months next preceding the election at which he offers to vote "[2]

The six months residency requirement for voting for the President and Vice-President of the United States is a recently enacted exception to the basic requirement of one year's residency for

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1. "Eligibility of new resident to vote--- Any citizen of the United States who shall have attained the age of twenty-one years, shall have resided in this state not less than six months next preceding the election at which he offers to vote, in the county or city and county not less than ninety days, and in the precinct not less than fifteen days, and shall have been duly registered as required by the provisions of this article, shall have the right to vote as a new resident for presidential and vice-presidential electors."

2. Id

voting in all other elections in Colorado.[3] The plaintiffs seek to vote only for the President and Vice President of the United States and, therefore, only § 49-24-1 of the Colorado Statutes is challenged in this case.

Plaintiffs are over the age of twenty-one years, citizens of the United States, and have been residents of El Paso County, Colorado, since June 15, 1968.[4]

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3. "Basic qualifications---(1)(a) Every person who has attained the age of twenty-one years, possessing the following qualifications, shall be entitled to register to vote at all general, primary, and special elections:

(b) He shall be a citizen of the United States;

(c) He shall have resided in this state one year immediately preceding the election at which he offers to vote, in the county ninety days, and in the precinct fifteen days. . . . ." 1963 C.R.S. § 49-3-1

4. Plaintiffs have purchased a home at 1617 North Corona Street, Colorado Springs, El Paso County. They have registered their car with the Colorado Motor Vehicle Bureau and have obtained Colorado driver's licenses. Plaintiff, Richard Hall, is permanently employed with the law firm of Quigley, Wilder, Helwig & Palermo, Suite 602 Pikes Peak Building, Colorado Springs, Colorado.

Plaintiffs moved to El Paso County from Contra Costa County, California, where they previously resided and had been registered to vote. In an effort to vote in the election for President and Vice-President of the United States on November 5, 1968, plaintiffs applied for absentee ballots from the State of California, but they were advised by the Contra Costa County election officials that they would not be allowed to vote in California because they were no longer residents of the State of California. On or about August 1, 1968, the plaintiff, Richard Hall, went to the office of the County Clerk and Recorder for El Paso County and requested that he and his wife be allowed to vote there in the election for President and Vice-President of the United States. The registration officials informed the plaintiff that he and his wife would not be allowed to register to vote in the November 5, 1968 election, because of failure to satisfy the residence requirements of the State of Colorado.

Plaintiff then wrote to the Secretary of State of California stating that he would not be allowed to vote in Colorado and requesting that he and his wife be allowed to vote in California for President and Vice-President. On August 28, 1968, plaintiff was informed by letter from the Secretary of State of California that he and his wife would not be allowed to vote in California because they were no longer residents. Plaintiff then wrote to the Secretary of State of Colorado

requesting that he and his wife be allowed to vote for President and Vice-President in Colorado despite the six-month residency requirement. On September 6, 1968, plaintiff was informed by the State Election Office that he and his wife would not be allowed to vote in the State of Colorado because they had not resided in Colorado for the required period of time.

The plaintiffs have exhausted their administrative remedies, and this Court has jurisdiction of the controversy, which arises under the Constitution and laws of the United States. 28 U.S.C. § 1343.

Art. II, Sec. 1 of the Constitution of the United States provides that the President and Vice-President of the United States shall be elected by electors chosen from each State, who shall be appointed "in such Manner as the Legislature thereof may direct." The various methods which have been used in the past for "appointing" electors are discussed in McPherson v. Blacker, 146 U.S. 1, 29-32, 13 S. Ct. 3, 36 L.Ed 869 (1892); for many years all of the States have chosen electors by popular votes.

It has long been settled law that the States have the power to prescribe reasonable and nondiscriminatory qualifications for voting in federal as well as state elections.[5] Therefore, Colorado has the

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5 The right of suffrage is not a privilege and immunity of a citizen of the

unquestioned responsibility and duty to prescribe reasonable and nondiscriminatory qualifications for voting in the election

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5 (continued)

United States, but is a right conferred by the States Minor v Happersett, 21 Wall. 162, 177, 22 L.Ed 627 (1875); Pope v Williams, 193 U.S 621, 632-633, 24 S. Ct 573, 575 (1904) The Supreme Court in Lassiter v Northampton County Board of Elections, 360 U.S. 45, 79 S. Ct 985 (1959), stated:

> "The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns . . . So while the right of suffrage is established and guaranteed by the Constitution it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress acting pursuant to its constitutional powers, has imposed

> We do not suggest that any standards which a State desires to adopt may be required of voters But there is wide scope for exercise of its jurisdiction Residence requirements,

for President and Vice-President of the United States. The Plaintiffs attempt to draw an analogy between the issue they

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5 (continued)

age, previous criminal record are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters." 360 U.S. at 50-51, 79 S.Ct. at 989-990. (Emphasis added.) (Citations within quote omitted.)

In Gray v. Sanders, 372 U.S. 382, 83 S. Ct. 801 (1963), the Supreme Court made it clear that the states have the power to prescribe qualifications for voting in federal as well as state elections by its statement that

> "[s]tates can within limits specify the qualifications of voters in both state and federal elections; the Constitution indeed makes voters' qualifications rest on state law even in federal elections. Art. I, §2." 372 U.S. at 379, 83 S.Ct. at 808

Although the Supreme Court in Carrington v. Rash, 380 U.S. 91, 85 S.Ct. 775, held unconstitutional a provision of the Texas Constitution prohibiting any member of the Armed Forces of the United States who moves his home to Texas during the course of his

present and the issues involved in the congressional redistricting and legislative reapportionment cases, e g., Reynolds v. Sims, 377 U S 533, 561-562, 84 S Ct 1362 (1964), and Avery v Midland County, 390 U S 474, 88 S Ct 1114 (1968). However, we find, as did the Three-Judge Court in Drueding v Devlin, 234 F. Supp. 721, 725 (D Md 1964), that those cases are not analogous to the issues presented here [6]

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5. (continued)

military duty from ever voting in any election in that State so long as he or she is a member of the Armed Forces, it recognized the long standing principle that "Texas has unquestioned power to impose reasonable residence restrictions on the availability of the ballot." 380 U.S. at 91, 85 S Ct at 777.

See also Drueding v Devlin, 234 F. Supp 721 (D Md 1964), aff'd per curiam, 380 U S 125, 85 S Ct 807 (1965); Harper v Virginia State Board of Elections, 383 U S 663, 86 S Ct 1079 (1966)

6 The Court in Drueding v Devlin, supra, stated that

> "it may be noted that the Supreme Court declined to intervene in such cases until it was convinced that there was little hope that the several state legislatures would take remedial action." 234 F Supp at 725

Since the State of Colorado has the authority and the responsibility to prescribe qualifications for voting in the election for President and Vice-President of the United States, the only real issue in this case is whether the Colorado Statute which requires residence in the State for six months before an otherwise qualified voter may vote is so unreasonable as to amount to a prohibited discrimination under the Equal Protection Clause of the Fourteenth Amendment.

The leading case on the reasonableness of state residency requirements is Drueding v Devlin, 234 F Supp 721 (D. Md 1964), aff'd per curiam, 380 U S. 125, 85 S Ct 807 (1965). In Drueding, a Three-Judge District Court was faced with the same question presented here. The plaintiffs there, as in the present case, were fully qualified except for satisfying the residency requirement. The statute required one year of residence within the state and six months within the county. The plaintiffs had moved to Maryland from Pennsylvania on June 6, 1964 and had sought to vote in the 1964 presidential election. In every sense, the facts in Drueding are parallel to the facts in this case.

The Court in Drueding noted that there are two purposes in such a statutory residency provision:

1. Identifying the voter and protecting against fraud.

2 Insuring that the voter will in fact become a member of the community, and as such have a common interest in all matters pertaining to its government The fully reasoned opinion by Judge Thomsen expressed the personal opinions of the Judges that the objectives of the statute could probably be attained by a shorter residency requirement, but concluded that the Court was not at liberty to substitute its personal views for those of the legislature in the absence of a showing of unreasonable discrimination. After carefully considering the applicable Supreme Court decisions, the Court concluded that the residency requirements were not so unreasonable as to amount to an irrational discrimination

The Supreme Court of Colorado has stated that the purposes of residency requirements are:

1 To preserve the purity of elections Mauff v People, 52 Colo 62, 123 P 101 (1912)

2 To prevent the control of state affairs by persons who have no pecuniary interest in them Merrill v. Shearston, 73 Colo 230, 214 P. 540 (1923) While the purpose mentioned in Merrill has no application in this case since the plaintiffs want to vote only in the presidential election, the state's interest in preserving the purity of its elections is very much present Some time limit must be set for

determining who is and who is not a resident of Colorado for the purposes of voting, not only to preserve the purity of the election, but also for administrative reasons. In line with the personal opinions of the Judges in Drueding that the objectives of residency requirements could probably be attained in a period less than a year, Colorado has chosen to amend its Constitution and pursuant to that amendment the Colorado legislature has provided a time limit of six months for presidential elections. We are not at liberty to substitute our personal views of what time limit would accomplish the objectives of a residency requirement for the judgment of the Colorado legislature in the absence of a showing of unreasonable discrimination.

The Court in Drueding held that a one year residency requirement was not so unreasonable as to amount to an irrational discrimination, and it was affirmed per curiam by the Supreme Court. The Supreme Court in that case had a clear opportunity to accept the contention that lengthy residency requirements are unreasonable and to set forth guidelines as to what time period would be reasonable. This recent indication of the Supreme Court's viewpoint cannot be ignored. Accordingly, we hold that the Drueding decision is positive authority for dismissal of the complaint and for denial of relief.[7] The

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[7] The Voting Rights Act of 1965 did not overrule Drueding since it is only applicable

Clerk is therefor ordered to dismiss the complaint and to dismiss the cause of action [8]

DATED at Denver, Colorado, this 29th day of November, A D 1968

BY THE COURT:

/s/ Delmas C Hill
DELMAS C HILL, Circuit Judge
Tenth Circuit Court of Appeals

/s/ Ewing T. Kerr
EWING T KERR, Chief Judge
United States District Court
District of Wyoming

/s/ William E Doyle
WILLIAM E DOYLE
United States District Court
District of Colorado

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7 (continued)

to invidious state action, such as discrimination based on race, color or creed There was absolutely no evidence, nor was it even contended, that Colorado's six month residency requirement discriminates against a class of citizens by reason of race, color, creed, or other invidious ground

8 The members of the Court recognize the unfairness and injustice in depriving the plaintiffs of their vote However, we are powerless to remedy this since we must follow the law